

1 JOHN HOUSTON SCOTT, CA BAR NO. 72578
LIZABETH N. DE VRIES, CA BAR NO. 227215
2 SCOTT LAW FIRM
1375 Sutter Street, Suite 222
3 San Francisco, CA 94109
Telephone: 415-561-9600
4 Facsimile: 415-561-9609

5 Attorneys for Plaintiff
FELICIA POWE-FLORES

6 DEBORAH J. BROYLES, CA BAR NO. 167681
7 DEBORAH R. SCHWARTZ, CA BAR NO. 208934
THELEN REID BROWN RAYSMAN & STEINER LLP
8 101 Second Street, Suite 1800
San Francisco, CA 94105
9 Tel. 415.371.1200
Fax 415.371.1211

10 Attorneys for Defendant
11 KAISER FOUNDATION HOSPITALS

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13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 FELICIA POWE-FLORES,

18 Plaintiff,

19 vs.

20 KAISER FOUNDATION HOSPITALS and
RYAN THOMAS,

21 Defendants.
22

Case No.: C 08-02527 TEH

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED] CASE
MANAGEMENT ORDER**

Judge: The Hon. Thelton E. Henderson
Date of Initial CMC: August 25, 2008
Time of Initial CMC: 1:30 p.m.

23 Pursuant to Local Rule 16-9 and the Standing Order for All Judges in the Northern
24 District, plaintiff Felicia Powe-Flores ("Plaintiff") and defendant Kaiser Foundation Hospitals
25 ("Kaiser") submit this Joint Case Management Statement and Proposed Case Management Order
26 and request the Court to adopt it as the Case Management Order in this case:

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28 ///

1 **1. *Jurisdiction and Service: The basis for the court's subject matter jurisdiction over***
 2 ***plaintiff's claims and defendant's counterclaims, whether any issues exist regarding***
 3 ***personal jurisdiction or venue, whether any parties remain to be served, and, if any***
 4 ***parties remain to be served, a proposed deadline for service.***

5 Response: This Court has original jurisdiction over this action because this case involves
 6 an alleged violation of 42 U.S.C. Section 1981. (28 U.S.C. §1331.) Kaiser has been served and
 7 has answered. On July 21, 2008, Plaintiff served by substitute service defendant Ryan Thomas
 8 (“Defendant Thomas”).

9 **2. *Facts: A brief chronology of the facts and a statement of the principal factual issues in***
 10 ***dispute.***

11 Plaintiff’s Response: In November 1993, Plaintiff Felicia Powe-Flores (“Flores”) began
 12 working for Defendant Kaiser as a Central Supply Technician. Flores remained in this position
 13 until 2002, when she transferred to the Oakland Sterile Processing Department to be a technician.
 14 Soon thereafter, Kaiser promoted Flores to Lead Technician and then to Sterile Processing
 15 Department Supervisor. Flores initially reported to Rodney Gore when he was her supervisor (and
 16 later when he became the manager), who reported to Jim Barnett, who reported to Eileen Ullman,
 17 who reported to Sandra Schmidt.

18 In 2002, Kaiser hired Defendant Ryan Thomas as a technician in the Oakland Sterile
 19 Processing Department, the same department in which Flores worked. From 2002 through 2006,
 20 Thomas made violent comments and gestures; exposed himself to Flores and others; and, Rodney
 21 Gore and Jim Barnett were aware of this inappropriate and dangerous behavior and failed to
 22 protect the employees from it.

23 On May 5, 2004, Thomas first threatened Flores individually. When Flores asked Thomas
 24 to return to the Sterile Processing Department from the employee lounge, he responded, “How
 25 dare you tell me what to do, you bitch! I should spit in your face...you hoe...black bitch! You
 26 don’t know who you are fucking with!” Flores asked Thomas not to speak to her in this manner, to
 27 which he responded, “Shut the fuck up...I could slap the shit out of you!” Flores ran to report the
 28 incident to Gore. Thomas followed her to Gore’s office and was pacing behind her. Gore invited
 Flores to go outside with him. Gore instructed Thomas to leave. Flores reported the incident to

1 security and the Oakland Police. She was subsequently reprimanded for not following the proper
2 chain of command to report her concerns to manager Jim Barnett rather than to supervisor Gore
3 before calling security.

4 In the course of Kaiser's "investigation" into the 2004 incident, Jim Barnett and Eileen
5 Ullman accused Flores, an African American woman, of discriminating against African American
6 men because she had made a previous report about another African American male who harassed
7 her and she was married to a non- African-American (Filipino) man. Kaiser imposed no discipline
8 against Thomas and did nothing to discourage any future threats.

9 After the 2004 threat, Flores's interactions with Thomas were limited. Flores worked the
10 night shift and Thomas was "on-call" and was not regularly called. More often than not, they
11 worked different shifts. Despite his 2004 criminal threat, Kaiser kept Thomas as an employee so
12 Flores attempted to maintain a professional relationship with him, particularly since she had been
13 promoted to a supervisory position.

14 On March 30, 2006, Flores alleges Thomas threatened her a second time when she was
15 leaving her night shift and he was arriving to his day shift. Thomas told Flores and another
16 supervisor, Rachel Moree, that he would "go to his car, get his knife and cut...[Felicia Flores] up
17 into little pieces." Rachel Moree reported the incident. Starting on April 3, 2006, Flores reported
18 the incident to several individuals, including Sandra Schmidt and Frank Mellon in the Human
19 Resources Department. Schmidt told Flores it looked "funny" that Flores had called security on
20 two occasions against two African American men. On April 4, 2006, Flores reported the threat to
21 Gore, who told Flores he had "White Man's Guilt" and did not want to see another African
22 American baby with a father who was not working. Thereafter, Flores received threatening
23 voicemail messages on her cell phone and text messages on her pager saying "just when you think
24 it is over, it has just begun."

25 On April 16, 2006, Flores requested that Kaiser provide her with the same protections it
26 had provided other White employees who were threatened by their co-workers, including
27 obtaining a restraining order. Kaiser did not respond to her request and never provided any
28 protections. Instead, Schmidt ordered Flores to attend a meeting with Thomas present. Although

1 Kaiser claims that it “promptly removed Thomas from the workplace, investigated the incident,
2 and determined that Thomas’s employment should be terminated as a result,” Thomas was still
3 present in the facility after the 2006 threat, no protections were provided to Flores, and, rather than
4 being fired, Thomas was permitted to resign.

5 After this 2006 threat, Flores began experiencing anxiety attacks, became physically ill,
6 and sought medical attention. In May 2006, Schmidt told Flores that she would need to handle her
7 anxiety attacks or the supervisor position was not the right position for her. Flores responded that
8 the attacks were not caused by the stress of her duties, but rather, out of her fear for her safety or
9 life after being threatened by Thomas.

10 After the 2006 threat, Flores was forced to transfer out of the Oakland facility because of
11 management’s hostility towards her. In June 2006, Flores applied for and received a lateral
12 transfer to work in the Sterile Processing Department at Kaiser’s Walnut Creek Hospital. But
13 Kaiser Oakland refused to immediately release Ms. Flores to transfer to the Walnut Creek facility,
14 and, had her continue to work for the Oakland facility until August 2006.

15 In September 2006, Flores applied for the Oakland manager position, previously held by
16 Barnett. In response, Schmidt told Flores that she was not to be promoted because of her anxiety
17 issues and the manner in which she handled the Thomas situation. In June 2007, Flores applied for
18 another manager position and was promoted to Sterile Processing Department Manager at Kaiser
19 Antioch, where she works to date.

20 Kaiser’s Response: In November 1993, Plaintiff began working for Kaiser as a Central
21 Supply Technician. She remained in this position until 2002, at which time she transferred to the
22 Oakland Sterile Processing Department to be Technician. Kaiser subsequently promoted Plaintiff
23 to Lead Technician and then to Sterile Processing Department Supervisor. In 2002, Kaiser hired
24 Defendant Thomas as a technician in the Oakland Sterile Processing Department, the same
25 department in which Plaintiff was a supervisor.

26 In May 2004, Plaintiff (who is African American) claims Thomas (who is African
27 American) made a racially derogatory remark to her. Specifically, she alleges that when she asked
28 Thomas to return to the Sterile Processing Department, he responded, “How dare you tell me what

1 to do, you bitch! I should spit in your face...you hoe...black bitch! You don't know who you are
 2 fucking with!" Plaintiff claims she asked Thomas not to speak to her in this manner, to which he
 3 responded, "Shut the fuck up...I could slap the shit out of you!" Plaintiff reported this incident to
 4 Kaiser security and the Oakland Police Department. Kaiser investigated the incident and took
 5 prompt and effective remedial action.

6 Plaintiff continued to work with Defendant Thomas in the Oakland Sterile Processing
 7 Department for the next two years without incident. Then, on March 30, 2006, Plaintiff alleges
 8 Thomas told another Sterile Processing Department Supervisor, Rachel Moree, he would "go to
 9 his car, get his knife and cut...[Plaintiff] up into little pieces." Plaintiff concedes she did not
 10 report this incident to Kaiser. As a result of Moree's complaint, Kaiser promptly removed
 11 Thomas from the workplace, investigated the incident, and determined that Thomas's employment
 12 should be terminated as a result. Plaintiff's conduct during Thomas's union-mandated disciplinary
 13 process was unprofessional and uncooperative.

14 Subsequently, Plaintiff applied for and received a lateral transfer to be a Sterile Processing
 15 Department at Kaiser's Walnut Creek Hospital. She continued to work in Oakland for several
 16 weeks after she was awarded this position. During this period, she refused to perform her job
 17 duties. It was during this same period (i.e., after she was awarded the transfer to Walnut Creek)
 18 that she asked to become the Manager of the Sterile Processing Department in Oakland. There is
 19 no merit to Plaintiff's claim that she was not awarded this position because of the complaint about
 20 Thomas. Regardless, Plaintiff subsequently was promoted to Sterile Processing Department
 21 Manager at another Kaiser facility where Plaintiff continues to work to date.

22
 23 3. ***Legal Issues: A brief statement, without extended legal argument, of the disputed points
 of law, including reference to specific statutes and decisions.***

24 Plaintiff's Response: Flores's legal issues to be tried include:

- 25 • Whether defendants are liable under Cal. Civ. Code Sections 51.7 and 52.1, public
 26 policy, and 42 U.S.C. Section 1981; and,
- 27 • How damages and injunctive relief under these claims will fully and fairly
 28 compensate the plaintiff.

1 Felicia Powe-Flores reserves the right to raise additional issues after discovery begins.

2 Kaiser's Response: Kaiser's legal issues to be tried include:

- 3 • Whether Plaintiff can establish a *prima facie* case of race discrimination under
4 Section 1981;
- 5 • If so, whether Kaiser can establish it had legitimate non-discriminatory reasons for
6 its actions.
- 7 • Assuming Kaiser can establish it had legitimate non-discriminatory reasons for its
8 actions, whether Plaintiff can demonstrate Kaiser's reasons were pretextual;
- 9 • Whether Plaintiff can establish a *prima facie* case of race harassment under Section
10 1981;
- 11 • Assuming Plaintiff can establish a *prima facie* case of race harassment, and to the
12 extent Plaintiff alleges she was subjected to such harassment by Defendant
13 Thomas, who was Plaintiff's subordinate and not a supervisory-level employee,
14 whether Kaiser knew or should have known of the alleged harassment and failed to
15 take appropriate corrective action;
- 16 • Whether Plaintiff can establish Kaiser wrongfully decided not to promote her to
17 the Oakland Sterile Processing Department Manager position in violation of public
18 policy;
- 19 • Whether Plaintiff's allegation about an alleged incident that occurred between her
20 and Defendant Thomas in 2004 is barred by the Bane and Ralph Acts three-year
21 statute of limitations;
- 22 • Whether Kaiser's conduct related to the March 2006 incident between Defendant
23 Thomas and Plaintiff violated the Ralph and/or Bane Acts;
- 24 • If liability is established, whether Plaintiff is entitled to damages, and if so, in what
25 amount in light of the fact that she currently is employed at Kaiser; and
- 26 • Whether Plaintiff is entitled to punitive damages.

27 Kaiser reserves the right to raise additional legal issues as the case progresses.

1
2 **4. *Motions: All prior and pending motions, their current status, and any anticipated motions.***

3 Plaintiff's Response: Flores has not filed any motions yet. She may file a motion to amend
4 and a motion for summary adjudication as to liability and other issues to be determined after she
5 has conducted discovery. At trial, she would oppose a motion to bifurcate liability and damages,
6 and, will file motions in limine.

7 Kaiser's Response: Kaiser has not filed any motions to date. Kaiser intends to file a
8 motion for summary judgment and/or partial summary judgment. If this case proceeds to trial,
9 Kaiser plans to file a motion to bifurcate the punitive damages claim, as well as appropriate
10 motions *in limine*.

11
12 **5. *Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.***

13 Response: Kaiser proposed the parties agree to an October 1, 2008 deadline to amend the
14 Complaint or add new parties. Since Ryan Thomas has yet to appear, and, the EEOC has yet to
15 conclude its investigation into the underlying facts of this litigation or issue a right-to-sue letter,
16 Flores reserves her right to seek to amend her complaint as soon as she discovers facts which
17 trigger the need to do so.

18
19 **6. *Evidence Preservation: Steps taken to preserve evidence relevant to the issues reasonably evident in this action, including interdiction of any document-destruction program and any ongoing erasures of e-mails, voice mails, and other electronically-recorded material.***

20
21 Response: Plaintiff's counsel and Kaiser's counsel have informed their respective clients
22 that relevant evidence must be preserved.

23
24 **7. *Disclosures: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26 and a description of the disclosures made.***

25 Response: On August 18, 2008, Plaintiff and Kaiser will exchange Initial Disclosures,
26 which include specific information about individuals who are likely to have discoverable
27 information which each party may use to support its claims or defenses, categories of documents
28

1 which may contain relevant information that each party may use to support its claims or defenses,
 2 a computation of damages claimed, if any, and insurance coverage, if any.

3
 4 **8. *Discovery: Discovery taken to date, if any, the scope of anticipated discovery, any***
 5 ***proposed limitations or modifications of the discovery rules, and a proposed discovery***
 6 ***plan pursuant to Fed. R. Civ. P. 26(f).***

7 Response: Both parties will propound written discovery, including interrogatories, requests
 8 for production, and/or requests for admission. Both parties will take depositions. The parties
 9 intend to work closely with each other to schedule depositions in a manner calculated to avoid
 10 unnecessary cost or burden. Because private personnel documents and information of current and
 11 former Kaiser employees may be produced during litigation, the parties will file a mutually
 12 agreeable Stipulated Protective Order based on the Northern District's Stipulated Protective Order
 13 template.

14 **9. *Class Actions: If a class action, a proposal for how and when the class will be certified.***

15 Response: This is not a class action.

16 **10. *Related Cases: Any related cases or proceedings pending before another judge of this***
 17 ***court, or before another court or administrative body.***

18 Response: In 2007, Plaintiff filed an administrative charge (Charge No. 550-2007-00445)
 19 with the Equal Employment Opportunity Commission ("EEOC") based on the same underlying
 20 allegations as Plaintiff's lawsuit which is pending before this Court. Plaintiff has not requested a
 21 right to sue from the EEOC, and her charge remains open to date. Plaintiff's counsel is seeking
 22 approval from Plaintiff to obtain an immediate right to sue from the EEOC.

23 **11. *Relief: All relief sought through complaint or counterclaim, including the amount of***
 24 ***any damages sought and a description of the bases on which damages are calculated. In***
 25 ***addition, any party from whom damages are sought must describe the bases on which it***
 26 ***contends damages should be calculated if liability is established.***

27 Plaintiff's Response: Plaintiff Powe-Flores seeks monetary relief according to proof. She
 28 seeks compensatory damages calculated by lost earnings, promotions, bonuses, and benefits; and,
 damage to her career and reputation. In addition, she seeks general damages for her ongoing fear,

1 anxiety, embarrassment, and emotional distress. In addition, she seeks heightened remedies
 2 including civil penalties permitted by statute, costs, and attorney-fee awards permitted by law.
 3 And she seeks punitive damages and prejudgment interest as awarded. In addition, she seeks
 4 injunctive relief to remedy the unlawful conduct.

5 Kaiser's Response: At this time, Kaiser has not asserted any counter-claims against
 6 Plaintiff, but reserves the right to do so should facts and information obtained during discovery so
 7 necessitate. Should Kaiser ultimately prevail with regard to Plaintiff's claims, it intends to seek
 8 the costs associated with this action. Kaiser reserves the right to seek costs and attorneys' fees as
 9 the circumstances of the case permit.

10
 11 **12. *Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR***
 12 ***plan for the case, including compliance with ADR L.R. 3-5 and a description of key***
 13 ***discovery or motions necessary to position the parties to negotiate a resolution.***

14 Response: Plaintiff and Kaiser will be filing a stipulation and proposed order selecting
 15 private mediation.

16 **13. *Consent to Magistrate Judge For All Purposes: Whether all parties will consent to have***
 17 ***a magistrate judge conduct all further proceedings including trial and entry of***
 18 ***judgment.***

19 Response: The parties do not consent to a magistrate judge for all purposes.

20 **14. *Other References: Whether the case is suitable for reference to binding arbitration, a***
 21 ***special master, or the Judicial Panel on Multidistrict Litigation.***

22 Response: The parties do not see this case as suitable for binding arbitration, a special
 23 master, or the Judicial Panel on Multidistrict Litigation.

24 **15. *Narrowing of Issues: Issues that can be narrowed by agreement or by motion,***
 25 ***suggestions to expedite the presentation of evidence at trial (e.g., through summaries or***
 26 ***stipulated facts), and any request to bifurcate issues, claims, or defenses.***

27 Response: Plaintiff has requested a jury trial in this matter. Kaiser may request
 28 bifurcation on the issues of liability and damages, as well as bifurcation of the issue of punitive

1 damages. The parties anticipate that a trial would require five to seven court days, and at this time
2 are unable to determine if there are expedited means of presenting evidence.

3
4 **16. *Expedited Schedule: Whether this is the type of case that can be handled on an expedited basis with streamlined procedures.***

5 Response: The parties do not believe this case is appropriate for handling on an expedited
6 basis.

7
8 **17. *Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.***

9 Response: At this time, the parties believe the earliest scheduling deadlines are as follows:

10	Deadline to amend Complaint	October 1, 2008
11	or add new parties:	
12	Non-expert discovery cutoff,	March 18, 2009
13	including filing any related motions:	
14	Deadline to file dispositive motions:	May 1, 2009
15	Pre-trial conference:	August 28, 2009
16	Trial:	September 28, 2009

17
18 **18. *Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.***

19 Response: Plaintiff requests a jury trial. The parties anticipate the trial lasting 5 to 7 court
20 days.

21
22 **19. *Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.***

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24
25
26
27 Plaintiff's Response: Powe-Flores is aware of no financial or interest to report.

28 Kaiser's Response: Kaiser has no such interest to report.

20. *Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.*

Response: The parties are not aware of other matters conducive to the just, speedy, and inexpensive resolution of this matter.

Date: August 18, 2008

Plaintiff's Counsel

/s/

Lizabeth N. de Vries

Attorney for Plaintiff

FELICIA POWE-FLORES

Date: August 18, 2008

Defendant Kaiser's Counsel

/s/

Deborah R. Schwartz

Attorney for Defendant

KAISER FOUNDATION HOSPITALS

IT IS SO ORDERED.

Date: _____

Thelton E. Henderson, Judge
United States District Court